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ATTORNEYS AT LAW

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July 3, 2008

Mr. Al Simpson  
Chairman, State Board of Education  
1429 Senate Street, Suite 1009  
Columbia, SC 29201

Re: Fisher Science Education; Request for  
Waiver of Liquidated Damages Assessment

Dear Mr. Simpson:

Our firm represents Fisher Science Education ("FSE"), a division of Thermo Fisher Scientific, Inc. FSE signed a contract ("Contract") with the State of South Carolina Board of Education ("Board") pursuant to which FSE agreed to sell science kits to the Board. On approximately April 1, 2008, FSE received a notice from Dr. Jim White of the State Textbook Office that the Board was assessing liquidated damages against FSE for failure to timely deliver products to the Board. Please consider this letter FSE's formal request for a waiver of such liquidated damages in accordance with the terms of paragraph four (4) of the Contract. The following is a brief summary of the events that have taken place between FSE and the Board and an explanation as to why FSE is deserving of a waiver and an amendment to the Contract.

FSE has had an agreement with the textbook publisher, McDougal Littell ("MDL") to provide their customers with kits containing science supplies for experiments included in MDL textbooks. Early in 2007, the Board adopted the MDL textbook. As a result, David Gribben and Jill Jones from FSE began to work with the Board's designate, Kris Stewart, to complete a contract between FSE and the Board for the sale of kits. During the process, Ms. Stewart had to go on medical leave. In her absence, FSE began communications with Vauline Johnson of the Board and Howie Beasley of the book depository. During the contract negotiations, Mr. Gribben and Ms. Jones made it clear to the Board that the kits FSE would be supplying to the Board were custom assembled and would take six (6) to eight (8) weeks from receipt of an order to delivery to the Board. This time period is required because each kit contains materials uniquely applicable to South Carolina schools. In addition, each kit has to be custom assembled



by hand on an order-by-order basis. Because of the unique nature of the kits and the fact they can only be used by South Carolina schools, it is impossible for FSE to place unused kits back into its inventory and resell to other customers. As a result, FSE explained to Mr. Johnson and Mr. Beasley the time it would take to build the kits, in addition to explaining the reasons behind the required time period. FSE understood that the parties had agreed that this term would be in the final Contract.

Despite discussions between FSE and the Board, a contract was not immediately signed. Notwithstanding this, orders for kits were placed as early as the summer of 2007, but FSE did not begin production of the kits because at the time, neither the Board nor the Attorney General had signed the Contract. Charlie Lang of FSE made repeated attempts to contact Ms. Stewart but did not receive a response. Mr. Lang's primary contact during this period was Ms. Johnson, who was cooperative but was not authorized to finalize the contract. In an effort to expedite the process, Mr. Lang made a personal visit to Columbia, South Carolina and met with Ms. Johnson, Mr. Beasley and Chris Christenson, another representative from the book depository. Mr. Lang concluded his visit with the assurance from all three individuals that a contract including all the agreed upon terms would be signed in the immediate future. Upon Mr. Lang's return from South Carolina, Ms. Stewart, who had returned from medical leave, finally contacted Mr. Lang. Ms. Stewart apologized for the delay in coming to terms on the Contract. On September 26, 2007, the Board signed the Contract.

Notwithstanding the encouraging visit and subsequent conversation with Ms. Stewart, the Contract remained unsigned by the Attorney General. Finally, on November 27, 2007, the Attorney General approved and signed the Contract. FSE first received notification of the Attorney General's signature and approval in January of 2008. Once it finally received such notification, FSE immediately began the production of the kits that had been ordered. The kits were delivered to their respective destinations within six (6) to eight (8) weeks after FSE received notification that the Contract had been approved. FSE agreed to the terms of the Contract on the understanding that the parties had agreed in good faith that FSE would have a six (6) to eight (8) week time frame to produce and deliver the kits. Unfortunately, that term was not included in the Contract despite these numerous discussions and references to the time frame by both parties.

On approximately April 1, 2007, Mr. Lang received a letter from Dr. Jim White indicating that FSE owed the State of South Carolina thirteen thousand nine hundred sixty dollars and 15/100 cents (\$13,960.15) in damages for delays in kit production according to the terms of the Contract. In the letter, Dr. White indicated the damages were for kits ordered in August of 2007, before either the Board or the Attorney General had signed the Contract. In response to Mr. White's letter, Mr. Lang and Mr. Gribben had numerous written and verbal exchanges with representatives of the Board in order to sort out the confusion, but were unable to obtain a relief from the damage assessment.

Based on the foregoing, FSE objects to the assessment of liquidated damages because (i) the damages assessed relate to time periods before the Contract was executed by the Board and the Attorney General, (ii) FSE informed representatives of the Board and the depository during

contract negotiations that FSE required six (6) to eight (8) weeks from the order date to produce and deliver kits and understood that the parties reached an agreement about this, and (iii) the Contract language makes it impossible for FSE to perform its obligations without incurring liquidated damages, and FSE requests a waiver of the liquidated damages assessment pursuant to paragraph four (4) of the Contract.

In order that this not become a continuing problem as the parties progress in their business relationship, FSE has also prepared an amendment to the Contract, a copy of which is enclosed for your records, to include the appropriate time frame for production and delivery of kits, a copy of which is enclosed. FSE requests that this amendment be approved for signature, and has submitted the amendment to Shelly Kelly for review and submission for approval.

Please let me know if you have any question or if I can be of assistance in any way.  
Thank you.

Very truly yours,

MICHAEL RITTER & ASSOCIATES, P.C.



Adam W. Van Dyk

AWV/cmp

Enclosures

Cc: Shelly Kelly  
Carol Collins



## INSTRUCTIONAL MATERIALS CONTRACT

### STATE OF SOUTH CAROLINA

### COUNTY OF RICHLAND

On December 14, 2005, the State Board of Education of the State of South Carolina (hereinafter referred to as the Board) gave formal notice to publishers and vendors of instructional materials (hereinafter referred to as the vendor) that it would consider samples submitted for examination in connection with the upcoming instructional materials adoption to be made by the Board; and

On December 14, 2005, the Board also advertised for bids on instructional materials to be filed with the State Superintendent of Education, as Administrative Officer of the Board, on or before **March 7, 2006** such bids to be opened in the presence of the Board or a committee duly appointed by the Board; and

The bid submitted by the vendor to supply the instructional materials set forth elsewhere in this Contract has been accepted by the Board; therefore, this Contract is made and entered into between the Board, and **Fisher Science Education**.

#### THE PARTIES MUTUALLY COVENANT AND AGREE:

##### 1. TERM

The term of this Contract shall be from **June 1, 2007** through **May 31, 2008**. If the S. C. General Assembly changes the statutory length of instructional materials contracts at any time during the term of this Contract, those changes in the law shall apply to and shall, after the first contract year, be binding to this Contract. **If at any time after the first year of this Contract funds are not appropriated or otherwise made available, the Board may terminate this Contract.** The State Board may terminate this Contract should the subject area of the materials be opened for adoption before the end of the six-year contract.

##### 2. CONTRACT PRICE

The vendor agrees to provide instructional materials at the net wholesale price as specified in the bid (hereinafter referred to as contract price).



### **3. CENTRAL DEPOSITORY**

The vendor will establish and maintain during the term of this Contract a single depository in the State to be known as the central depository. A sufficient inventory of instructional materials adopted by the Board will constantly be kept in stock at the depository. The location and manager of the depository must be approved by the Board. The manager will give a bond to the Board in the amount of \$10,000, securing the depository's faithful performance of this Contract. The vendor further agrees that the depository manager will be the agent of the vendor to perform services required by this Contract.

### **4. SUPPLY OF INSTRUCTIONAL MATERIALS TO CENTRAL DEPOSITORY**

The vendor will furnish through the central depository to any entity or person in this State the instructional materials named at the contract price without any additional charge to the vendor for transportation. Upon failure to supply the central depository with a sufficient number of instructional materials to promptly fill all orders received from the Board, any school district, or agency approved by the Board, the vendor agrees to pay to the State Treasury for the use of the instructional materials fund, liquidated damages in the amount equal to 5% of the contract price of the late order for each initial late order; and 10% of the contract price of each subsequent late order until stock is replenished. The damage period begins fifteen calendar days after the date the unfilled order is delivered to the central depository, unless the order designates a later date for delivery, at which time the damage period begins. The parties agree that the liquidated damages set forth represent the reasonable damages resulting from late deliveries, and that the amounts shown do not constitute penalties. This provision in no way limits the State's remedies. The Board will annually receive a report from the State Department of Education (hereinafter referred to as the Department) regarding any such late deliveries and the appropriate liquidated damages. It is further understood and agreed between the parties that the Board may, at its discretion, relieve the vendor of any liability for late delivery under this Contract unless such violation results from the willful act of the vendor. The vendor agrees to replace defective or substandard materials without cost to the State during the term of this Contract.

### **5. QUALITY OF INSTRUCTIONAL MATERIALS**

The vendor warrants and agrees that the instructional materials furnished under this Contract shall equal or surpass in all respects the Official Minimum Manufacturing standards



established by the Advisory Commission on Textbook Specifications (ACTS). Compliance with such standards does not relieve vendor of obligations arising out of any other warranties applicable to the instructional materials sold hereunder, whether such warranties are express or implied. If at any time during the continuance of this Contract the vendor fails to maintain the standard of quality and excellence described above, the vendor shall be in breach of contract and the bond herein provided for shall be declared forfeited at the option of the Board.

The vendor guarantees that the instructional materials adopted will at all times be equal in every respect to the samples submitted. All samples must be marked as official by the vendor and kept on file at the Department.

The vendor will use its best efforts to provide instructional materials that are free of errors. If, despite these efforts, typographical or factual errors occur, the vendor will cooperate with the State to correct such errors.

The vendor shall act in good faith and in a commercially reasonable manner to correct all errors found in the adopted instructional materials identified by the State or by any other party before the instructional materials are shipped to South Carolina and where reasonably possible shall assure errors are corrected in subsequent printings of the instructional materials adopted by the State. The vendor shall correct any other errors found at a later time, by providing the State errata sheets or other corrective measures as appropriate. It is understood that errors do not include matters of interpretation or opinion and only include typographical errors and errors of fact. A statement of fact will not be deemed an error if the vendor shows that it is based upon material from a recognized or authoritative source. Information that was accurate at the time of the original publication of the instructional materials which becomes outdated as a result of a change in events or circumstances occurring after publication shall not be deemed an error.

Failure of the vendor to act in a commercially reasonable manner shall constitute breach of contract whereby the State is entitled to a full refund for the instructional materials purchased, in addition to any other remedies available at law or equity, upon the return of the instructional materials to the vendor. All shipping costs shall be paid by the vendor.



**6. MOST FAVORED PURCHASER**

If subsequent to the *date that bids had to be submitted for this particular instructional materials adoption, which is set forth on page one of this Contract*, the net wholesale price of any instructional materials included in this Contract is reduced, or, if more favorable terms of sale are offered to another purchaser anywhere in the United States the vendor agrees to apply the same terms to this State.

The vendor must immediately notify the Superintendent of Education of South Carolina in writing by registered mail if the vendor sells or offers any special or other edition of instructional materials named in this Contract at a lower wholesale price than that offered in this State. The Board may require the vendor to issue a similar edition for South Carolina, adapted for use in this State. The South Carolina edition must be sold at the lowest wholesale price at which any similar special edition is sold anywhere in the United States. In investigating the special edition, the contents of the instructional material must be considered and not merely the title.

At the end of each calendar year when requested in writing by the State Department of Education, publishers shall submit a certified list of all contracts made with other entities during the calendar year just closed, on all instructional materials for which the publisher has a contract in South Carolina. That list must include the contract price for those materials.

**7. RETURN OF NEW MATERIALS AFTER TERMINATION OF CONTRACT**

During the contract period, all new and unused instructional materials may be returned to the Depository for credit or refund at the price it was originally invoiced. At the expiration of the contract, the State has one year to return to the Depository new and unused instructional materials for credit or refund at the price it was originally invoiced. During this one-year period, the amount to be returned cannot exceed 5% of the net amount purchased during the contract period. However, the Board is not responsible under any circumstance for instructional materials not invoiced remaining in the depository. All returned materials will be shipped as directed by the vendor, freight collect, within one year of the expiration of this contract.

## **8. DUTIES OF THE BOARD**

The Board agrees to provide the South Carolina public schools the adopted instructional materials in accordance with the general powers of the Board as set forth in state law and regulation. Details of introduction, purchase, use, and **amount** of the instructional materials included in this Contract will be determined by the Board for each official course of study. The Board will not authorize the purchase of any instructional materials under this Contract if appropriations, revenues, income, or other funding is determined by the Board to be insufficient to permit the purchase of such instructional materials.

## **9. AFFIDAVIT**

The affidavit submitted with the bid of the vendor is hereby made a part of this Contract. If any part of this affidavit is found to be untrue, this Contract shall immediately be subject to cancellation by the Board.

## **10. PERFORMANCE BOND**

The vendor agrees that on or before **June 29, 2007**, it will execute and deliver to the Board a good and sufficient bond payable to the Board of the State of South Carolina with a surety company authorized to do business in the State of South Carolina in the sum of **\$1,000.00** for the faithful performance of this Contract. The form and execution of the bond must be approved by the Attorney General of South Carolina pursuant to S.C. Code Ann. Section 59-31-560 (2004). **Any single violation of this Contract by the vendor shall entitle the Board to recover the actual losses as a result of the forfeiture, the minimum recovery for the actual and other losses suffered shall be \$100.00.** Any recovery must go into the State Treasury for the use of the instructional materials fund of South Carolina, and all attorney's fees and costs incurred by reason thereof to be paid by the vendor. The bond shall not be exhausted by a single recovery, but may be sued on from time to time by the Board, upon thirty (30) days written notice by registered mail, and any refusal by the vendor to give an additional bond shall cause the Contract to be subject to cancellation at the option of the Board. The bond shall be transferred to another surety company upon demand of the Board upon notice, if at any time the Board deems such transfer advisable.



## **11. ANCILLARY MATERIALS AND SERVICES LIST**

The bidder agrees to designate on the Ancillary Materials and Services List, which is attached to and incorporated as a part of this Contract, all ancillary materials and/or service such as teacher's editions, workbooks, duplicating masters, in-service training, consultants, etc., which will be made available at no cost or at a specified reduced cost on an equitable basis to any school district which adopts its instructional materials.

Only those items having intellectual content that serve as a tool for assisting in the instruction of a subject or course such as hardcover or softcover textbooks, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software may be offered as ancillary. Publishers may not offer schools or school districts items, including equipment and supplies that do not have intellectual content. The State Department of Education reserves the right to reject any items offered as ancillary, which it deems lacking in intellectual content or not suitable for providing instruction.

No amendments to this list shall be made from the date bids are opened until one year after the beginning date of the term of this Contract unless required by the most favored purchaser provision as set forth in this Contract. Should the most favored purchaser provision of this Contract require new or additional ancillary offerings, the vendor shall file with the State Superintendent of Education a certified statement setting forth the nature and circumstances (what, when, where, why) of the offering.

Publishers whose programs are adopted are required to maintain a Web site that shows a list of their ancillary materials. The Web site must be operational and available for viewing by the State Department of Education six months prior to the effective date of the instructional materials contract. Publishers are encouraged but are not required to provide an electronic order form on the Web site. At a minimum, the Web site must provide a printable order form and instructions for ordering ancillary materials. Proposed changes, additions, or deletions to the ancillary materials listed on the Web site shall be submitted in writing to the State Department of Education for review and approval and subject to the provisions above. The Web site must be maintained for the duration of the contract. This requirement may be

waived at the discretion of the State Department of Education for publishers with limited ancillary listings or for low enrollment subject areas. Waiver requests must be in writing to the State Department of Education.

**12. FAILURE TO PROVIDE ANCILLARY SERVICES OR OFFERING SERVICES NOT ON LIST**

If the vendor offers any material or service **not** designated on the ancillary list as an inducement to adopt its program, or if the vendor fails to make available to all school districts which adopt its instructional materials the ancillary materials and/or services which the vendor normally provides at no cost or at a reduced cost to school districts adopting its instructional materials, the Board has the right to deny the vendor further participation in the South Carolina Instructional Materials Adoption Process, which action does not waive any other contractual or common law rights of the Board.

**13. CHANGE IN STATE LAW**

Nothing in this Contract shall be construed to limit, restrict, or impair the right of the General Assembly of the State of South Carolina to change any statute under which this Contract is made or awarded. This Contract shall be subordinate to the right of the General Assembly to amend, modify or repeal any statute relating to instructional materials. The terms of the Contract that conflict with future laws shall be deemed abrogated and of no effect. The parties may agree to rescind this Contract by written notice of the intention to do so at any time within ninety days after the effective date of any such changed statute if the statute is mutually disadvantageous to the parties.

**14. JURISDICTION**

Any action at law, or in equity, or other judicial proceeding for the construction or enforcement of any provision of this Contract must be brought in the Court of Common Pleas of South Carolina having jurisdiction of the matter. It is mutually understood and agreed that this Contract shall be governed by the laws of the State of South Carolina, both as to interpretation and performance.

Nothing in this Contract shall be construed to limit the State's remedies in the event of a breach by the vendor.



**15. AGENT FOR SERVICE OF PROCESS**

The **name** and **address** of the person or entity listed with the Secretary of State as the registered agent of the vendor for the receipt of service of legal process on behalf of the

vendor is: (name) FISHER SCIENCE EDUCATION

(address) 4500 TURNBERRY DR.  
HANOVER PARK, IL 60133

The vendor shall, at all times during the term of this contract, maintain a registered agent for the service of process with the South Carolina Secretary of State.

**16. INFORMATION AND DATA REQUESTS**

The Board may request data and information from vendors during the contract period. This information will include but is not limited to publisher contract data with other states for Most Favored Purchaser verification and bid information. Upon the written request of the State Department of Education, the vendor will provide information and or data that have been requested by the Board on diskette.

**17. ADOPTED INSTRUCTIONAL MATERIALS IN BRAILLE FORMAT**

The publisher, by signing this contract, gives the South Carolina Department of Education the rights to transcribe or have transcribed any and all instructional materials covered by this contract into Braille for use, free, by South Carolina students. These rights are given at no extra cost to the state. To facilitate the transcription into Braille, upon written request by the Department, the publisher agrees to furnish to the Department, electronic formats suitable for the transcription into Braille of the pupil editions for newly submitted programs in literary subject areas that are covered by this contract. The publisher agrees to provide electronic formats suitable for the transcription into Braille of the pupil editions for newly submitted programs in non-literary subject areas. When commercially reasonable technology becomes available to do so, a publisher will be deemed to have satisfied its obligations under this paragraph by providing electronic files of the same type(s) that it is concurrently providing to other departments of education, to the American Printing House for the Blind, and to other similar non-profit institutions, for those organizations to use to create Braille versions of pupil-editions, for distribution free to students.

**18. SIGNATURES OF PARTIES**

The Board of Education of the State of South Carolina, represented by the Chair of the Board and the State Superintendent of Education as the Administrative Officer of the Board, and the vendor by its undersigned authorized agent, have affixed their respective signatures on the dates set forth below.

**STATE BOARD OF EDUCATION OF THE STATE OF SOUTH CAROLINA:**

By John E. Tindal and  
(Chairperson)  
Jim Lyles  
(State Superintendent of Education and Administrative Officer)  
Date 9/26/07

**VENDOR:**

Fisher Science Education of 4500 Turnberry Drive  
(Vendor) (Address)  
By [Signature] Hanover Park, IL 60133  
(Authorized Agent) (City) (State) (Zip)  
Date 7/5/07

**ATTORNEY GENERAL:**

I approve form and execution of the within Contract:

[Signature]  
(Attorney General)  
Date 11/22/07



Title of Instructional Materials	Consumable Nonconsumable	ISBN	Grade	Net Wholesale Price f. o. b. Publisher's Shipping Point		Copyright	SDE use	
				Net	Wholesale		Code Number	RSFDI

**Science, Middle****Science****South Carolina Custom Lab Kits, Grade 6**

Kit Non-consumable-Complete (McDougal Littell Science Curriculum)	NC	M-L7S-C06ND-0	06	\$4,250.00	\$0.00	2007	07-30906	dr R
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**South Carolina Custom Lab Kits, Grade 6, Diversity of Living Things**

Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CDLCN-D	06	\$916.00	\$0.00	2007	07-30303	dr R
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Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CDLNN-D	06	\$579.00	\$0.00	2007	07-30302	dr R
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**South Carolina Custom Lab Kits, Grade 6, Earth and Machines**

Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CERCN-D	06	\$199.00	\$0.00	2007	07-30903	dr R
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Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CERNN-D	06	\$803.00	\$0.00	2007	07-30902	dr R
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**South Carolina Custom Lab Kits, Grade 6, Earth's Atmosphere**

Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CEACN-D	06	\$259.00	\$0.00	2007	07-30901	dr R
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Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CEANN-D	06	\$951.00	\$0.00	2007	07-30900	dr R
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**South Carolina Custom Lab Kits, Grade 6, Electricity and Magnetism**

Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CEMCN-D	06	\$212.00	\$0.00	2007	07-30905	dr R
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Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CEMNN-D	06	\$667.00	\$0.00	2007	07-30904	dr R
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**South Carolina Custom Lab Kits, Grade 7**

Kit Non-consumable-Complete (McDougal Littell Science Curriculum)	NC	M-L7S-C07ND-0	07	\$3,350.00	\$0.00	2007	07-30920	dr R
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## 2007 South Carolina Instructional Materials Contract

Fisher Science Education

Contract Date: June 1, 2007 - May 31, 2013

Title of Instructional Materials	Consumable Nonconsumable	ISBN	Grade	Net Wholesale Price f. o. b. Publisher's Shipping Point		Copyright	Code Number	SDE use	
				Net Wholesale	Exchange			RSFPU	
<b>South Carolina Custom Lab Kits, Grade 7, Cells and Heredity</b>									
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CCHCN-D	07	\$283.00	\$0.00	2007	07-30311	dr R	
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CCHNN-D	07	\$520.00	\$0.00	2007	07-30310	dr R	
<b>South Carolina Custom Lab Kits, Grade 7, Chemical Interactions</b>									
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CCICN-D	07	\$407.00	\$0.00	2007	07-30918	dr R	
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CCINN-D	07	\$566.00	\$0.00	2007	07-30917	dr R	
<b>South Carolina Custom Lab Kits, Grade 7, Ecology</b>									
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CECCN-D	07	\$373.00	\$0.00	2007	07-30914	dr R	
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CECNN-D	07	\$253.00	\$0.00	2007	07-30913	dr R	
<b>South Carolina Custom Lab Kits, Grade 7, Human Biology</b>									
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CHBCN-D	07	\$280.00	\$0.00	2007	07-30912	dr R	
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CHBNN-D	07	\$462.00	\$0.00	2007	07-30911	dr R	
<b>South Carolina Custom Lab Kits, Grade 7, Matter</b>									
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CMTCN-D	07	\$189.00	\$0.00	2007	07-30916	dr R	
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CMTNN-D	07	\$286.00	\$0.00	2007	07-30915	dr R	
<b>South Carolina Custom Lab Kits, Grade 8</b>									
Kit Non-consumable-Complete (McDougal Littell Science Curriculum)	NC	M-L7S-C08ND-0	08	\$4,050.00	\$0.00	2007	07-30939	dr R	



Title of Instructional Materials	Consumable Nonconsumable	ISBN	Grade	Net Wholesale Price f. o. b. Publisher's Shipping Point		Copyright	SDE use Code Number	RSFDL
				Net Wholesale Exchange				
South Carolina Custom Lab Kits, Grade 8, Changing Earth								
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CCECN-D	08	\$345.00	\$0.00	2007	07-30932	dr B
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CCENN-D	08	\$650.00	\$0.00	2007	07-30931	dr B
South Carolina Custom Lab Kits, Grade 8, Earth's Surface								
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CESCN-D	08	\$292.00	\$0.00	2007	07-30319	dr B
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CESNN-D	08	\$595.00	\$0.00	2007	07-30315	dr B
South Carolina Custom Lab Kits, Grade 8, Motion and Forces								
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CMFCN-D	08	\$617.00	\$0.00	2007	07-30934	dr B
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CMFNN-D	08	\$176.00	\$0.00	2007	07-30933	dr B
South Carolina Custom Lab Kits, Grade 8, Space Science								
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CSSCN-D	08	\$347.00	\$0.00	2007	07-30938	dr B
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CSSNN-D	08	\$430.00	\$0.00	2007	07-30937	dr B
South Carolina Custom Lab Kits, Grade 8, Wave, Sound, Light								
Kit Consumable (McDougal Littell Science Curriculum)	C	M-L7S-CWLCN-D	08	\$276.00	\$0.00	2007	07-30936	dr B
Kit Non-consumable (McDougal Littell Science Curriculum)	NC	M-L7S-CWLNN-D	08	\$648.00	\$0.00	2007	07-30935	dr B

## 2007 Ancillary Materials and Services

### Fisher Science Education

Ancillary ProgramTitle/Copyright/Grade	ISBN	Specified Fee	Ancillary Description	SDE use only R/S/B/D
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### *Science, Middle*

#### Science

#### **South Carolina Custom Lab Kits, Grade 6, 2007; Adopted Grade(s) 06**

Diversity of Living Things; Earth and Machines; 0-000-00000-0 Earth's Atmosphere; and Electricity and Magnetism	0-000-00000-0	None	None listed	R
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#### **South Carolina Custom Lab Kits, Grade 7, 2007; Adopted Grade(s) 07**

Cells and Heredity; Chemical Interactions; Ecology; Human Biology; and Matter	0-000-00000-0	None	None listed	R
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#### **South Carolina Custom Lab Kits, Grade 8, 2007; Adopted Grade(s) 08**

Changing Earth; Earth's Surface; Motion and Forces; Space Science; and Wave, Sound, Light	0-000-00000-0	None	None listed	R
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# BOND FOR INSTRUCTIONAL MATERIALS

KNOW ALL MEN BY THESE PRESENTS, That we Fisher Science Education, as principal,  
and Westchester Fire Insurance Company

are held and firmly bound unto the State of South Carolina, in the penal sum of One Thousand (\$1,000.00) Dollars, to the payment of which well and truly to be made, we bind ourselves, and each and every of us, our heirs, executors and administrators, successors and assigns, firmly by these presents.

SEALED with our seal and dated this 29th day  
of June, Anno Domini Two thousand and zero  
and seven in the two hundred and thirty-first year of the  
Independence of the United States of America.

WHEREAS, The above bound Fisher Science Education,  
did on the 14th day of December 2005, enter into a contract with the State of South Carolina, and its State Board of Education, to furnish instructional materials/textbooks for the use in public schools in said State from June 1, 2007 to May 31, 2008, in the manner and according to the terms, stipulations and specifications contained in said contract, it being specially provided in said contract, that the above bound Fisher Science Education, therein called the party of the second part, at the time of the execution of said contract, will execute and deliver to the party of the first part a bond in the sum of \$1,000.00 (One Thousand) Dollars, payable to the State of South Carolina, conditioned for the faithful, honest and exact performance of said contract, and that the party of the second part shall forfeit twenty-five dollars for each violation of the agreement; and, also, that the party of the second part shall pay reasonable attorney's fees and costs in case of recovery in any suit upon the same; that said bond is to be signed by any surety company authorized by law to do business in the State of South Carolina, and approved by the Attorney General of said State, and that the said bond so executed shall not be exhausted by a single recovery, but may be sued on from time to time, until the full amount thereof shall be recovered; and should the State Board of Education, at any time during the continuance of said contract, require additional security for the faithful performance thereof, the said party of the second part, after thirty days' notice, agrees to give additional security or execute and deliver an additional bond.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound Fisher Science Education shall well and truly perform all the covenants in said contract, and truly comply with all the requirements and stipulations thereof, during the whole period of said contract, then the above obligation to be void and of none effect or else remain in full force and virtue.

SIGNED, SEALED AND DELIVERED IN  
THE PRESENCE OF

Jim A. Zumbo Witness

Kathleen T. Hadden Witness  
As to Principal

Michael Kulis Witness

Sandra Diaz Witness  
As to Surety

Bond Number: K07634274  
Executed in Duplicate  
SDE 46-051-01

Fisher Science Education (L.S.)  
By [Signature] Principal

Westchester Fire Insurance Company (L.S.)

By Evangelina L. Dominick Surety  
Evangelina L. Dominick, Attorney-in-fact  
I approve form and execution of the within bond.


11/27 2007  
[Signature] Attorney General

CORPORATE ACKNOWLEDGMENT

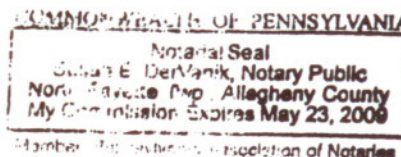
COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ALLEGHENY

On this *29<sup>th</sup>* day of *June* 2007, before me personally came Jon M. Harrison, to me known, who, being duly sworn, did depose and say; that he resides in Allegheny County, Pennsylvania, and that he is the Director of Financial Operations of the Fisher Scientific Company L.L.C., the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of Board of Directors of said corporation, and that he signed his name thereto by like order.



Notary Public





# Power of Attorney

380063

WESTCHESTER FIRE INSURANCE COMPANY



1210895

Know all men by these presents: That WESTCHESTER FIRE INSURANCE COMPANY, a corporation of the State of New York, having its principal office in the City of Atlanta, Georgia, pursuant to the following Resolution, adopted by the Board of Directors of the said Company on December 11, 2006, to wit:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such persons written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested.

FURTHER RESOLVED, that the Resolution of the Board of Directors of the Company adopted at the meeting held on November 8, 1999 relating to the authorization of certain persons to execute, for and on behalf of the Company, Written Commitments and appointments and delegations, is hereby rescinded.

Does hereby nominate, constitute and appoint VIVIAN CARTI, DEBRA A. DEMING, BETTY CALDERON, HALINA KAZMIERCZAK, CYNTHIA FARRELL-SOMERSALL, THOMAS RHATIGAN, ELIZABETH MARRERO, SANDRA DIAZ, EVANGELINA L. DOMINICK and ANNETTE M. LEUSCHNER all of the City of New York, State of New York, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding Ten Million Dollars (\$10,000,000) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, the said Stephen M. Haney, Vice-President, has hereunto subscribed his name and affixed the corporate seal of the said WESTCHESTER FIRE INSURANCE COMPANY this 29th day of May 2007.



WESTCHESTER FIRE INSURANCE COMPANY

*Stephen M. Haney*

Stephen M. Haney, Vice President

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA ss.

On this 29th day of May, A.D. 2007, before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Stephen M. Haney, Vice-President of the WESTCHESTER FIRE INSURANCE COMPANY to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.



NOTARIAL SEAL  
Kathleen Tirri, Notary Public  
Philadelphia, Philadelphia County  
My commission expires September 22, 2007

*Kathleen Tirri*

Notary Public

I, the undersigned Assistant Secretary of WESTCHESTER FIRE INSURANCE COMPANY, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation, this 29 day of June 2007



FO-04-19

*William L. Kelly*

William L. Kelly, Assistant Secretary

THIS POWER OF ATTORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER May 29, 2009



**WESTCHESTER FIRE INSURANCE COMPANY****FINANCIAL STATEMENT****DECEMBER 31, 2006****ADMITTED ASSETS**

BONDS	\$1,729,763,005
SHORT - TERM INVESTMENTS	25,153,792
STOCKS	154,887,336
REAL ESTATE	0
CASH ON HAND AND IN BANK	(74,947)
PREMIUM IN COURSE OF COLLECTION*	116,402,754
INTEREST ACCRUED	16,895,983
OTHER ASSETS	254,645,146
<b>TOTAL ASSETS</b>	<b>\$2,297,673,069</b>

**LIABILITIES**


RESERVE FOR UNEARNED PREMIUMS	\$391,811,211
RESERVE FOR LOSSES	1,243,956,960
RESERVE FOR TAXES	8,090,954
FUNDS HELD UNDER REINSURANCE TREATIES	0
OTHER LIABILITIES	(3,963,619)
<b>TOTAL LIABILITIES</b>	<b>1,639,895,506</b>

CAPITAL: SPECIAL SURPLUS	200,132,500
CAPITAL: 928,592 SHARES, \$4.85 PAR VALUE	4,503,871
CAPITAL: PAID IN	179,710,659
SURPLUS (UNASSIGNED)	273,430,733
SURPLUS TO POLICYHOLDERS	657,777,563
<b>TOTAL</b>	<b>\$2,297,673,069</b>

(\*EXCLUDES PREMIUM MORE THAN 90 DAYS DUE.)

**STATE OF PENNSYLVANIA****COUNTY OF PHILADELPHIA**

John P. Taylor, being duly sworn, says that he is Vice President of Westchester Fire Insurance Company and that to the best of his knowledge and belief the foregoing is a true and correct statement of the said Company's financial condition as of the 31 st day of December, 2006.

Sworn before me this 18th day of April, 2007.  
Vice President  
Notary Public  
My commission expires

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Danielle M. Deroen, Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires Oct. 21, 2008  
Member, Pennsylvania Association of Notaries



## EXHIBIT A

RESOLVED, that the following employees of Fisher Scientific Company L.L.C. be and each of them is hereby authorized and empowered, within the dollar indicated, to execute for and on behalf of Fisher Scientific Company L.L.C. quotations, bids, proposals and sales contracts, to or with any individual, corporation or other business entity, and also to or with the United States of America or any foreign nation and any of their respective departments, bureaus or subdivisions, any state of the United States, any municipality, and any college, university or other institution:

### NORTH AMERICAN DISTRIBUTION OPERATIONS

Not Exceeding \$10,000	Any Fisher Service Division Area Service Director Any Quotations Coordinator
Not Exceeding \$50,000	Any Customer Service Supervisor Any Service Supervisor Any Customer Service Team Leader Any Customer Service Group Leader Any Quotations Supervisor Any Regional Training Supervisor Any Regional Trainer Any Senior Quoter Any Director, Fisher Service Division Administration Any Sales Office Supervisor Any Sales Representative
Not Exceeding \$100,000	Any Sales Manager Any Region Manager Any Distribution/Sales/Safety Manager Any Quotations Manager Any Customer Service Manager Any Customer Service Director Any Marketing Manager Any Distribution Systems Manager Any Senior Account Manager Any Operations Manager
Not Exceeding \$200,000	Any Sales Director Any Corporate Accounts Director Any National Accounts Director
Not Exceeding \$1,000,000	Any Divisional Vice President Any Corporate Vice President
Not Exceeding \$5,000,000	Any Divisional President
Without Limit	Corporate President Corporate Treasurer Corporate Secretary